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Supreme Court, U.S.
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JAN 25 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 656

HARRY HIRSCHKOWITZ and ROY SIMS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

EDWIN F. WOODLE,
JEROME B. GOLDMAN,
628 Keith Bldg.,
Cleveland 15, Ohio,
Counsel for Petitioners,
Harry Hirschkowitz and Roy Sims.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-8847

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

Petitioners, Harry Hirschkowitz and Roy Sims, pray that a writ of certiorari issue to the Supreme Court of the State of Ohio to review the decision and the judgment of that court overruling motions filed therein by these petitioners to certify to that court the record of the Court of Appeals of the Eighth Appellate District of Ohio, in the cause wherein these petitioners were defendants, entitled *State of Ohio vs. Harry Hirschkowitz, et al.*, and the further order of the Supreme Court of Ohio denying the motions of these petitioners for leave to appeal to the Supreme Court of Ohio, and the order of the Supreme Court of Ohio denying petitioners' application for rehearing.

By its judgment and orders the Supreme Court of Ohio refused to review and, accordingly, permitted to stand as affirmed, the judgment of conviction of these petitioners of the offense of larceny by trick, which judgment had theretofore been affirmed by the Court of Appeals of the Eighth Appellate District.

The motions of these petitioners for leave to appeal were overruled on October 7, 1959, and petitioners' application for rehearing was denied on October 28, 1959.

OPINION BY COURTS BELOW.

Neither the trial court, the Court of Appeals, nor the Supreme Court of Ohio, rendered any opinion or furnished any memorandum in connection with their respective judgments.

JURISDICTION.

Jurisdiction to review the aforesaid judgments and orders is conferred on this Court by the Act of June 25, 1948, c. 646, 62 Stat. 929, Title 28, U. S. C. Sec. 1257. The portion of that section pertinent to jurisdiction in this review provides as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court as follows: * * * (3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, Treaties or Statutes of * * * the United States."

QUESTIONS PRESENTED FOR REVIEW.

Did the Supreme Court of Ohio deprive the petitioners of their constitutional rights, without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States by refusing to consider upon the merits, and thereupon to reverse, the judgment of the Court of Appeals of Ohio—

(a) Which upheld the sufficiency of an indictment charging only that the petitioners unlawfully obtained possession of money "by false and fraudulent representa-

tions and pretenses," and alleging nothing further with respect to the nature or the manner of exercise of such "false and fraudulent representations and pretenses," nor any facts upon which such charge was based;

(b) Which upheld the sufficiency of an indictment that, upon the trial of the case, in the absence of any allegations of fact, furnished the court with no standard or guide to determine what evidence was relevant and admissible and what evidence was not relevant and inadmissible, with respect to the claims of false representations and pretenses;

(c) Which upheld the validity, as applied to an indictment charging the criminal procurement of money by false and fraudulent pretenses, of an Ohio statute declaring that an indictment charging such offense is sufficient if it is couched "in the words of the section of the Revised Code describing the offense."

Did the Supreme Court of Ohio deprive the petitioners of their constitutional rights by failing to accord to them the equal protection of the law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States by refusing to consider upon the merits, and thereupon to reverse, the judgment of the Court of Appeals of Ohio—

(a) Which refused to apply to the indictment the established rule in Ohio that an indictment must set forth the facts constituting the offense so that the accused may have notice of what he is to meet;

(b) Which refused to apply to the indictment the established rule in Ohio that a criminal charge must be preferred with such certainty and precision that the court may determine, without unreasonable difficulty, what evidence is admissible?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitution of the United States, Amendment 14:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Constitution of Ohio, Article I, Sec. 10:

"No person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury * * *. In any trial in any court the party accused shall be allowed to appear and defend in person and with counsel to demand the nature and cause of the accusation against him and to have a copy thereof."

Revised Code of Ohio:

Sec. 2907.21:

"No person shall obtain possession of, or title to, anything of value with the consent of the person from whom he obtained it, provided he induced such consent by false or fraudulent representation, pretense, trick or writing.

"Whoever violates this section is guilty of larceny by trick and if the value of the thing so obtained is Sixty Dollars, or more, shall be imprisoned not less than one, nor more than seven years."

Sec. 2941.05:

"In an indictment or information charging an offense, each count shall contain, and is sufficient if it contains

in substance, a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations not essential to be proved. It may be in the words of the section of the Revised Code describing the offense or declaring the matter charged to be a public offense, or in any words sufficient to give the accused notice of the offense of which he is charged."

Sec. 2941.06:

"An indictment may be substantially in the following form:

The State of Ohio:
County: ss

Of the term of _____ in the year of our Lord, one thousand nine hundred and _____ The jurors of the grand jury of the State of Ohio, within and for the body of the county aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that A. B. on the ____ day of _____, 19__ aforesaid, did _____ (herein insert the name of the offense if it has one, such as murder, arson or the like, or if a misdemeanor having no general name, insert a brief description of it as given by law) contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

_____ C. D.
Prosecuting Attorney

(Indorsed) A True Bill.
E. F. Foreman of the Grand Jury."

Sec. 2941.07:

"The following forms may be used in charging offenses; * * * Larceny. A. B. stole from C. D. * * * of the value of one hundred dollars."

Sec. 2941.08:

"An indictment or information is not made invalid, and the trial judgment or other proceedings stayed, arrested or affected: * * * (d) for stating imperfectly the means by which the offense was committed except insofar as means is an element of the offense * * *. (k) for other defects or imperfections which do not tend to prejudice the substantial rights of the defendant upon the merits."

INDICTMENT.

The indictment in this case contained two counts and is herewith set forth in full.

"The State of Ohio:
Cuyahoga County: ss

Of the term of September in the year of our Lord one thousand nine hundred and fifty-seven. The jurors of the grand jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present; that Harry Hirschkowitz, Roy Sims and Leo Parker, on or about the 13th day of September, 1957, at the county aforesaid, did unlawfully obtain possession of certain money in the amount and value of One Thousand Dollars ($1,000.00) from Sam W. Levine, the property of Sam W. Levine, and did obtain said property from the said Sam W. Levine with the consent of the said Sam W. Levine, which consent the said Harry Hirschkowitz, Roy Sims and Leo Parker induced by false and fraudulent representations and pretenses, with the intent of permanently depriving said Sam W. Levine of said One Thousand Dollars ($1,000.00), contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Signed: John T. Corrigan, Prosecuting Attorney."

For a second count, the indictment reads in full:

"The State of Ohio:
Cuyahoga County: ss

Of the term of September in the year of our Lord one thousand nine hundred and fifty-seven. The jurors of the grand jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that Harry Hirschkowitz, Roy Sims and Leo Parker on or about the 20th day of August, 1957, at the county aforesaid, did unlawfully obtain possession of certain money in the amount and value of Three Hundred Dollars ($300.00) from James L. Altmeyer, the property of James L. Altmeyer, and did obtain said property from the said James L. Altmeyer with the consent of the said James L. Altmeyer, which consent the said Harry Hirschkowitz, Roy Sims and Leo Parker induced by false and fraudulent representations and pretenses, with the intent of permanently depriving said James Altmeyer of said Three Hundred Dollars ($300.00), contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Signed: John T. Corrigan, Prosecuting Attorney."

STATEMENT OF THE CASE.

This case is concerned only with the denial of petitioners' constitutional rights by reason of the insufficiency of the indictment. Neither the claims of the respective parties concerning the facts of the case, nor the evidence received during the trial, relate to the questions raised. Accordingly, there will be no discussion here either of such claims or of the evidence.

At the outset of the trial and before any evidence was received, the petitioners moved that the indictment be

quashed as insufficient. (R. p. 12.) That motion was overruled.

Prior to the trial the petitioners had requested the prosecutor to furnish a bill of particulars. A purported bill of particulars was furnished in response to this request, which under the law of Ohio cannot be considered as in any way aiding the sufficiency of the indictment or correcting any deficiency in the indictment.

As to each count in the indictment with respect to the "false and fraudulent representations and pretenses" which allegedly "induced" the complaining witnesses to part with the "certain money" designated in each count, the bill of particulars asserted only that the petitioners "acting in concert and by the use and means of an artifice and scheme, commonly known as three-card Monte, and through such artifice and scheme and false representations made pursuant thereto" unlawfully obtained the possession of the money referred to in the indictment. No additional claims with respect to the alleged false and fraudulent pretenses, and no facts concerning them, were set forth in the bill of particulars, the remainder of which consisted only of a repetition of the language of the indictment.

Again, for each of these petitioners, a motion was made before the presentation of any evidence (R. pp. 48 and 55) that they be discharged on the basis of the indictment and the opening statement of the prosecutor. Those motions likewise were overruled.

Upon appeal to the Court of Appeals of the Eighth Appellate District of Ohio, the first and foremost claim of error presented related to the insufficiency of the indictment. It was there contended (Petitioners' brief p. 5) that "the indictment must state the crime charged with certainty and precision and set out the facts which constitute

the same, so as to advise the accused of what he may expect to meet on the trial of the case. This is a constitutional right and cannot be dispensed with by the Legislature, nor has it been."

The same contention was presented upon the briefs filed by petitioners in the Supreme Court of Ohio in support of their motions to certify and for leave to appeal. Petitioners' brief in support of their application for rehearing relied strongly upon two decisions of this Court to which reference will be made hereafter: *United States vs. Cruikshank*, 92 U. S. 542, 23 Laws. Ed. 588, and *United States vs. Hess*, 124 U. S. 483, 31 Laws. Ed. 516, 8 Supreme Ct. 571.

ARGUMENT.

In essence this case involves the important question as to how far the State of Ohio—or any state for that matter—may go in "simplifying" criminal procedure without violating basic constitutional rights of the accused.

This Court has on occasion upheld the validity of statutes intended to modernize and streamline criminal procedure. Nothing, however, that this Court has said justifies upholding the sufficiency of an indictment of an accused based upon the broad ground of fraud and false pretenses without any allegation of facts or specific claims sufficient to enable the accused to know the nature of the charges which he will be required to meet at the time of trial.

An indictment which charges the commission of an offense "induced by false and fraudulent representations and pretenses" charges at the same time everything and nothing. This fact is implicitly recognized by the standard encyclopedic text of the law of Ohio, under the title "Fraud and Deceit," in Vol. 24 *Ohio Jurisprudence 2*,

pages 620 and 621. Referring to the term "fraud," it is there stated:

> "The term admits of no positive definition and cannot be controlled in its application by fixed and rigid rules. It is sometimes said to consist of any kind of artifice employed by one person to deceive another, or of some wilful act or omission which is unconscientious and a violation of good faith and by which one person obtains an undue advantage over another. By fraud is meant all surprise, trick, cunning, dissembling and other unfair ways that are used to cheat another. It is a deception deliberately practiced with a view to gaining an unlawful or unfair advantage * * *.
>
> "False pretenses means any trick or device whereby the property of another is obtained * * *. Fraud is multifarious in its form and is always assuming new forms."

In Vol. 23, *American Jurisprudence*, at page 753, under the same title, "Fraud and Deceit," it is stated:

> "In fact the fertility of man's invention in devising new schemes of fraud is so great that courts have always declined to define it, reserving to themselves the liberty to deal with it under whatever form it may present itself."

It is for this very reason that when an accused in a criminal case is indicted for an offense allegedly resulting from fraud or false representations and pretenses, he is entitled to be informed, as a part of the statement of the charge against him, of the precise nature of the fraud against which he will be required to defend upon the trial of the case. The necessity of complying with the constitutional rights of the accused is scarcely satisfied by the feeling of the prosecutor that the accused "knows what this case is all about."

The general rule applicable to this question will be found in the latest revised edition of *Wharton on Criminal Law and Procedure*, 1957, Vol. 4 p. 552:

> "*The fact that the counts of an indictment or information are in the form prescribed by statute will not save them from the constitutional objection that they did not sufficiently disclose the cause and nature of the accusation* * * *.
>
> "Whether at common law or under statute, the accusation must include * * * such description of the particular act alleged to have been committed by the accused as will enable him properly to defend against the accusation, and the description of the offense must be sufficiently full and complete to accord to the accused his constitutional right to due process of law.
>
> "The offense and the essential elements thereof must be alleged * * * not by way of recital or mere legal conclusions and unaided by intendment or inference."

This Court has on many occasions inquired into the sufficiency of indictments. We respectfully direct the attention of the Court to the following two cases, *U. S. vs. Cruikshank*, 92 U. S. 542, 23 Laws. Ed. 588:

Court:

> "It is an elementary principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, includes generic terms, *it is not sufficient that the indictment shall charge the offense in the same generic terms* as in the definition; but it must state the species; it must descend to particulars. * * * For this; *facts are to be stated, not conclusions of law alone* * * *.
>
> "Offenses created by statute, as well as offenses at common law, must be accurately and clearly described in an indictment; and *if the offense cannot be so*

described without expanding the allegations beyond the mere words of the statute, then it is clear that the allegations of the indictment must be expanded to that extent * * *.

"Every offense consists of certain acts done or omitted under certain circumstances; and in the indictment for the offense, it is not sufficient to charge the accused generally with having committed the offense, but all the circumstances constituting the offense must be specially set forth."

United States vs. Hess, 124 U. S. 483, 31 Laws. Ed. 516, 8 Supreme Ct. 571:

Syl. 1:

"Revised Statutes U. S. Sec. 5480, renders it criminal for any person, having devised a scheme or artifice to defraud other persons by inciting them to open communication with him through the post office, to place any letter in or to receive any letter from any post office, held—that **an indictment under the statute is insufficient which only charges the offense in general language without disclosing the particulars of the alleged scheme or artifice to defraud.**"

Court:

"The statute upon which the indictment is founded only describes the general nature of the offense prohibited; and the indictment, in repeating its language without averments disclosing the particulars of the alleged offense, states no matters upon which issues could be formed for submission to a jury * * *.

"The statute is directed against 'devising or intending to devise, any scheme or artifice to defraud,' to be 'effected by communication through the post office. **As a foundation for the charge, a scheme or artifice to defraud must be stated, which the accused either devised or intended to devise, with all such particulars as are essential to constitute the scheme or**

artifice, and to acquaint him with what he must meet on the trial * * *.

"The absence of all particulars of the alleged scheme renders the count as defective as would be an indictment for larceny without stating the property stolen, or its owner or party from whose possession it was taken.

"The doctrine invoked by the Solicitor General that it is sufficient, in an indictment upon a statute, to set forth the offense in the words of the statute, does not meet the difficulty here.

"*Undoubtedly the language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged.* * * * Following this rule, it must be held that the second count of the indictment before us does not sufficiently describe an offense within the statute.

"The essential requirements, indeed, or the particulars constituting the offense of devising a scheme to defraud, are wanting. Such particulars are matters of substance and not of form and their omission is not aided or cured by the verdict."

We believe the principles enunciated in the above cases are peculiarly and particularly appropriate to the case at bar. Significantly, the decision of this Court in the *Hess* case was cited with approval in the opinion of the Supreme Court of Ohio in the case of *State vs. Knight*, 54 Ohio State 365, 375, 43 North Eastern 995, 996.

Law of Ohio.

The judgments of the various Ohio courts in the instant case might lead an impartial observer to believe that the established law of Ohio differs from the prin-

ciples enunciated by this Court in the above cases. Nothing can be further from the truth. The established law in the State of Ohio conforms precisely to the principles set forth by this Court in the *Hess* case. It was, in fact, established more than one hundred years ago. The following statements are examples taken from several of the many cases in which that law has been pronounced by the Supreme Court of Ohio:

Lamberton vs. State, 11 Ohio 282 (1842), Syl. 1:

"An indictment must set forth the facts constituting the crime, so that the accused may have notice of what he is to meet, of the act done which it behooves him to controvert so that the court applying the law to the facts charged against him may see that a crime has been committed."

Dillingham vs. State, 5 Ohio State 280 (1855), Opinion:

"'The nature and cause of the accusation' are not sufficiently stated to enable the accused to know what he might expect to meet upon the trial; and it is neither consistent with general principles nor constitutional safeguards to allow a man to be thus put to trial upon a criminal charge in the dark."

Redmond vs. State, 35 Ohio State 81 (1878), Opinion:

"It is a rule of criminal law based upon sound principles that *every indictment should contain a complete description of the offense charged. It should set forth the facts constituting the offense so that the accused may have notice of what he is to meet*, and so that the court applying the law to the facts charged against him, may see that a crime has been committed."

Du Brul vs. State, 80 Ohio State 52, 87 North Eastern 837 (1909).

Syl. 1:

"*A criminal charge should be preferred with such certainty and precision* as will reasonably apprise the party charged with that which he may expect to meet and be required to answer and *so that* the court and jury may know what they are to try, and the *court may determine without unreasonable difficulty what evidence is admissible.*"

Syl. 2:

"**An indictment** brought under Sec. 7075, Revised Statutes, charging the presentation to the county commissioners of a false and fraudulent claim, and obtaining payment of the same by the county treasurer **which, in describing the claim** avers it to have been 'a certain false and fraudulent claim' but in no way avers wherein it was false and fraudulent and **states no facts showing that it was false or fraudulent, is bad on demurrer and will not support a conviction.**"

On the face of it, the pronouncements of the Supreme Court of Ohio in the *Du Brul* case obviously applied to, and should have been applied by the court to, the indictment in the instant case. That case, although decided fifty years ago, is still the law in Ohio.

In 1929 the Legislature of Ohio enacted a "modern" code of criminal procedure, for the purpose of simplifying and streamlining practice in this field. In the thirty years which have elapsed since the new code of criminal procedure was enacted, the Supreme Court of Ohio has only once determined the effect of the new provisions upon the constitutional rights of the accused. This was done in the case of *Harris vs. State*, 125 Ohio State 257, 181 North Eastern 104, decided in 1932, at which time the Court declared.

Syl. 4:

"While the court recognizes and will apply the liberal provisions of the criminal code (General Code 13437-4, now Revised Code 2941.05) it will uphold the constitutional right of an accused to be advised in the indictment of the nature and cause of the accusation he is expected to meet.

"And if a vital and material element identifying or characterizing the offense be omitted from such indictment, the indictment is insufficient to charge an offense and cannot be cured by the court."

Opinion (p. 260):

"The indictment is faulty in two respects. It is indefinite in that it does not state what the fine and costs were which he (the defendant) falsely represented to the prosecuting witness * * *.

"*While we recognize and will apply the liberal provisions of the present criminal code, which gives wide latitude to the courts with respect to the curing of indictments, and their review by the appellate courts, we cannot do so where the accused's constitutional rights are violated and he has been prejudiced thereby.*"

Before turning to the question of the effect upon the constitutional rights of the petitioners of the failure of the courts of Ohio to apply to the indictment in this case the established law of Ohio, this Court should be advised concerning the function and effect of a bill of particulars under the law of Ohio. This question has not been determined by the Supreme Court of Ohio, but has been considered and decided in two recent cases by the Courts of Appeals of Ohio.

In the case of *State vs. Collett*, 44 Ohio Law Abstract 225, 58 North Eastern 2d 417 (1944), the rule is an-

nounced in paragraph 2 of the syllabus in the Northeastern Reporter, as follows:

"A bill of particulars is designed to be used only where indictment is sufficient on demurrer."

Campfield vs. State, 91 Ohio Appeals 74, 105 North Eastern 2d 661:

Syl. 4 (105 North Eastern):

"Indictment failing to state offense could not be cured by bill of particulars."

Opinion:

"The office of a bill of particulars is to supply the accused and the court additional information concerning an accusation that the defendant has committed an act or acts constituting a criminal offense.

"It is designed to be used only where the indictment is sufficient on demurrer * * *.

"The infirmity in the indictment here is not that it is uncertain, vague or irregular, but that it states no offense."

State vs. Kearns, 126 North Eastern 2d 607:

Syl. 2:

"The furnishing of a bill of particulars does not deprive defendant of right to file motion to quash indictment."

It is one of the basic rights of an accused that he may not be convicted of an offense consisting of acts other than those charged against him by the grand jury in the indictment. In the instant case, it is impossible to determine from the indictment what act or acts the petitioners were charged by the grand jury with having committed.

The charge that the petitioners obtained money "by false and fraudulent representations and pretenses" contains only a conclusion of law so broad that evidence of any

act or acts charged against the petitioners could be received at will by the trial court, without any standard of relevancy or pertinency by which the propriety of the court's rulings could possibly be tested; nor can it possibly be determined now that the petitioners in this case were actually convicted of the offense which the grand jury had *in mind*, but did not charge in the indictment.

Equal Protection of the Law.

It is submitted that the failure of the courts of Ohio to apply to the indictment in this case the established law of Ohio constituted a denial to the petitioners of the equal protection of the law guaranteed by the provisions of the Fourteenth Amendment to the Constitution of the United States.

When the question at issue is the validity and sufficiency of an indictment, and the state has established principles of law the application of which will determine that the indictment is insufficient and states no offense, but the state, through its courts, refuses to apply the established rules which have been applied to numerous comparable cases, the equal protection of the law has been denied.

In Vol. 12, *American Jurisprudence*, at page 257, is the following summarization of the applicable principles:

> "The purpose of the equal protection clause of the Fourteenth Amendment to the Federal Constitution is to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through duly constituted agents. An actual discrimination arising from the method of administering a law is as potential in creating a denial of equality of rights as a discrimination made by law."

The same result follows and the same principle applies whether the discrimination arises from the administration of a state statute by the executive or the administration through the courts of the law established by the courts.

In the case of *Cochran vs. State of Kansas*, 316 U. S. 255, 86 Lawyer's Ed. 1453, 62 Supreme Court 1068, the petitioner in a habeas corpus proceeding alleged certain denials of his rights by the trial judge, among them the claimed denial of the right to summon witnesses and to testify on his own behalf as well as action by officials of the state penitentiary making it impossible for him to perfect an appeal within the period provided by Kansas law. In the opinion of this Court, it is noted:

> "The state properly concedes that if the alleged facts pertaining to suppression of Cochran's appeal 'were disclosed as being true before the Supreme Court of Kansas, there would be no question but that there was a violation of the equal protection clause of the Fourteenth Amendment.'"

In the case of *Dowd vs. United States, ex rel., Cook*, 340 U. S. 206, 95 Lawyer's Ed. 215, 71 Supreme Court 262, this Court held:

Syl. 1 (71 Supreme Court):

> "A discriminatory denial of the statutory right of appeal to one convicted of an offense in state court was a violation of equal protection clause of the Fourteenth Amendment" and

Syl. 4 (71 Supreme Court):

> "Where petitioner had been denied equal protection in violation of the Fourteenth Amendment in that he has been prevented by state prison officials from sending out his appeal papers and thereby taking appeal from his conviction in state court, nothing short of an actual appellate determination of the merits of the convic-

tion according to procedure prevailing in the ordinary cases would cure the original denial of equal protection."

The above cases involve a denial of equal protection of the law through a denial of procedural rights. The instant case involves a denial of an even more basic right resulting in the trial and conviction of the petitioners upon an indictment which under the established law of the state of Ohio charges no offense.

One other brief reference will be made to the case of *Ortega vs. Ragen*, 216 Federal 2d 561, 7 Circuit Court of Appeals, Cert. den., 349 U. S. 940, 75 Supreme Court 786. Court:

"If appeals are provided for there must be no arbitrary discrimination, and if plaintiff could show he was not allowed to appeal his conviction while others in his position were, he would show deprivation of his right to equal protection."

Pertinent to the instant proceeding the case stands for the proposition that a denial of the equal protection of the law may result as well from the conduct of the judicial branch of the government as from the conduct of the legislative or executive branches.

CONCLUSION.

It is not only of paramount importance to the petitioners in this case that the rights guaranteed to them by the Constitution of the United States be preserved by he courts of Ohio, but it is of great importance to all who hereafter may be charged with violation of a number of the statutes of Ohio grounded upon alleged fraud and false representations, that, as the Supreme Court of Ohio once cogently observed, the state should not "allow a man to be thus put to trial upon a criminal charge in the dark."

Official Ohio statistics for 1958, the latest available, disclose 1,276 indictments filed during that year involving charges of embezzlement and fraud. The calculable number of accused who will assuredly be subjected to similar deprivation of their constitutional rights over any given period is enormous.

When consideration is given to the infinite variety of circumstances and conduct which may be characterized as fraud or which the state may attempt to bring within the meaning of false representations, surely the state should be required to frame its indictment so that the accused is informed of the acts which are alleged to constitute a criminal offense. Equally it is important that the trial court should be required to limit the admissibility of evidence by testing its relevancy against the acts charged in the indictment. Where no specific act or acts are charged, the court is free to admit evidence of any act or conduct which in the court's view tends to establish any kind of fraud, and the entire basis of due process of law, as applied to the trial of the charge, begins to crumble and fall.

Unless this Court intervenes and requires that not only basic principles of due process but, to assure to all persons similarly accused that the established law of the State of Ohio be applied in this case, the State of Ohio will

continue the practice followed in this case of trying accused persons upon charges which state nothing more than unsubstantial legal conclusions, charges which in fact, as well as in law, state nothing against which the accused may, or should be required to, defend.

Respectfully submitted.

EDWIN F. WOODLE,
JEROME B. GOLDMAN,
Counsel for Petitioners,
Harry Hirschkowitz and Roy Sims.

APPENDIX.

Journal Entry of the Court of Appeals of Cuyahoga County, Ohio.

DATED: February 20, 1959

This cause came on to be heard on the appeal on questions of law from the judgment of the Court of Common Pleas, and was argued by counsel for the parties; and upon consideration of all of the errors assigned, the Court finds no error prejudicial to the appellants and therefore the judgment of the Court of Common Pleas is affirmed.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. Appellants except.

Journal Entry of the Supreme Court of Ohio on Motion for Leave to Appeal.

DATED: October 7, 1959

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal Entry of the Supreme Court on Application for Re-hearing.

DATED: October 28, 1959

Upon consideration of the above application for re-hearing, it is ordered by the Court that re-hearing be, and the same hereby is, denied.

FILE COPY

Office-Supreme Court, U.S.
FILED
FEB 23 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 656

HARRY HIRSCHKOWITZ AND ROY SIMS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

JOHN T. CORRIGAN,
Prosecuting Attorney of Cuyahoga County,
THOMAS L. OSBORNE,
Assistant Prosecuting Attorney,
Criminal Courts Building,
Cleveland 14, Ohio,
Attorneys for Respondent,
The State of Ohio.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-8647

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In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. .....

HARRY HIRSCHKOWITZ AND ROY SIMS,

Petitioners,

vs.

THE STATE OF OHIO,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

OBJECTIONS TO JURISDICTION.

The State Court has not decided a federal question of substance not theretofore determined by this Court, nor has the State court decided any question in a way not in accord with applicable decisions of this Court. No real or substantial federal question is involved herein.

QUESTION PRESENTED.

Petitioners claim that they were denied due process of law and the equal protection of the law in violation of the Constitution of the United States and the State of Ohio in that they were held to answer and compelled to go to trial on the charge of an infamous crime without a valid and sufficient indictment of the Grand Jury.

STATEMENT OF THE CASE.

The evidence established that, during the period July 24 to September 13, 1957, the petitioner Hirschkowitz participated in six acts of fleecing victims out of more than $6,800.00. The petitioner Sims took part in three of the same swindles, involving more than $1,300.00.

In each case the *modus operandi* was basically the same. An ally of the petitioners would select a victim from persons emerging from a bank, pose as an illiterate out-of-towner, exhibit a bundle of money, announce that he was in the city for a gay time, and request assistance in locating a non-existent Jackson Hotel, where a loose woman supposedly resided. Hirschkowitz would then appear, give no indication of knowing his accomplice, join in the conversation, and offer to drive the "stranger" to a place that offered the same attraction as the Jackson Hotel. At this point, the so-called out-out-towner would exhort the victim to accompany him on the journey, and offer to pay both Hirschkowitz and the victim for their time and inconvenience.

When the destination had been reached—an alley or parking lot behind apartments or dwellings—Hirschkowitz would enter a building, emerge a few minutes later with a deck of cards, and announce to his accomplice and to the victim that the "girls" were currently busy. One of the petitioners or their ally (the stranger) would suggest playing three-card monte in the car to while away the interim. The victim would be swept into the game, become confused by the fast talk and other circumstances, and involuntarily participate out of fear based upon his being outnumbered. The confidence men would bet the victim's money without his permission and either lose it or fail to pay him when he won.

Finally, the swindlers would promise to repay the victim's "losses" or to pay his "wins" if he withdrew from bank and exhibited to them a huge sum of money. He would then be driven to the bank and withdraw the funds. That sum too would either be forcefully taken from his or be "lost" to the defendants when they summarily started a new game and bet it for him without his consent. In each case the victim would be nothing more than a confused and cowed spectator at the scene of his own fleecing.

The evidence showed that the victim's consent to part with his money was induced by the petitioners' false and misleading words and actions and eloquent silences. Part and parcel of the fleecing operation were the contrived atmosphere of physical fear and emotional conflict.

Indictments were predicated upon the last two of the six acts of larceny by trick. By virtue of Ohio's "similar act" statute (Ohio Revised Code, Sec. 2945.59), evidence of the preceding four swindles was admitted.

CHRONOLOGY.

On October 15, 1957, the petitioners, together with a companion, pleaded not guilty to the two-count indictment charging them with having unlawfully obtained possession of (1) $1,000.00 from Sam W. Levine and (2) $300.00 from James L. Altmeyer with the consent of the victims, which consent had been induced by false and fraudulent representations and pretenses. (Ohio Revised Code, Sec. 2907.21.)

Four months later, and one week before the commencement of trial, namely, on February 13, 1958, they requested a bill of particulars.

On February 19, 1958, the prosecuting attorney voluntarily and without being ordered by court to do so, pre-

sented a bill containing the following particulars: The petitioners and their companion had acted in concert and by the use and means of an artifice and scheme, commonly known as three-card Monte, and, through such artifice and scheme and false representations made pursuant thereto, had obtained the monies specified in the indictment.

At the commencement of the trial on February 20, 1958, the prosecutor (in response to a question of the trial judge) started that the "false representations" had been made not only pursuant to the conduct of the game of three-card Monte, but also antecedent to the game, the manner of leading the prosecuting witness into the game.

Thereupon the petitioners moved "that the indictment, together with the Bill of Particulars, be quashed as insufficient, with the understanding that *if the Court desires that it be made sufficient, that perhaps can be done.*" (Emphasis supplied.)

The motion to quash was overruled.

The case proceeded. Petitioner Hirschkowitz called as defense witnesses two police officers whose testimony concerned only the dispatch of vehicles to the scene of the arrest and the "booking" of the petitioners at the police station. Neither petitioner Sims nor the companion presented any evidence whatsoever in their own behalf. The petitioners did not testify.

LAW AND ARGUMENT.

Indictment.

The indictment fulfilled all constitutional provisions and the requirements of the applicable statutes governing form, validity, and sufficiency. (U. S. Const., Amend. XIV; Ohio Const. Art. I, Sec. 10; Ohio Revised Code, Secs. 2941.03, 2941.04, 2941.05, 2941.06, 2941.07, 2941.08, 2941.10, 2941.28.)

The charge was "in the words of the section of the Revised Code describing the offense or declaring the matter charged to be a public offense." (Ohio Revised Code, Sec. 2941.05.)

At no time prior or subsequent to the commencement of the trial was the *validity* of the indictment questioned. Petitioners can hardly be heard to complain, especially in view of Ohio Revised Code, Section 2941.29, providing that objections to an indictment are to be seasonably made.

The motion to quash the indictment, orally presented at the beginning of the trial February 20, 1958, was properly overruled because, among other reasons, the petitioners had pleaded the general issue of not guilty on October 15, 1957, thus waiving defects which might be excepted to by a motion to quash. (Ohio Revised Code, Sec. 2941.59; *State v. Foston,* 70 Ohio Law Abs. 540 (Miami County Court of Appeals, 1954) 129 N. E. 2d 307.

At page 8 of their petition, opposing counsel impliedly admit the validity of the indictment when they state that, prior to trial, a bill of particulars was requested and was furnished, "*which under the law of Ohio cannot be considered as in any way aiding the sufficiency of the indictment or correcting any deficiency in the indictment.*"

If the indictment had been invalid, a subsequent bill of particulars would not cure the invalidity.

The matter of the sufficiency of an indictment is exhaustively discussed in *Wharton's Criminal Law and Procedure*, 1957, Vol. IV, pp. 548 to 562, secs. 1758 to 1764.

"* * * it is the policy of modern courts to disregard mere technical objections and to require only that an indictment shall fully state the essential elements of the offense charged * * *.

"The power of the legislatures, acting within constitutional limitations, to dispense with artificialities, technicalities, or of forms in criminal pleadings and to substitute short, simplified forms for the old is settled. Under these simplifying provisions *it is the general rule that an information or indictment is sufficient if the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition or great specification of particulars*, and in such manner as to enable a person of common understanding to know what is intended, and to enable the court to pronounce judgment on a conviction, according to the right of the case, *even though matters of an evidentiary nature are omitted therefrom, especially when they are of such nature as may be supplied by a bill of particulars on application therefor seasonably made* * * *.

"* * * the accused (is entitled) to be advised of the nature of the charge against him, *not to have set forth in the indictment all the specific facts relied on to sustain the charge* * * *.

"Less strictness in pleading the offense is required in those jurisdictions in which an abbreviated or short form of indictment is authorized and the granting of a bill of particulars is made mandatory upon the demand of the defendant * * *.

"While an indictment must set out facts, *it is neither necessary nor proper to allege evidence or dis-*

close in the indictment or information the proof which the prosecution relies upon to establish the charge, or to allege the specific act or acts which proximately caused the result upon which the indictment is based Matters of description or inducement need not be stated with the same particularity as the facts constituting the essential elements of the crime itself are required to be stated * * *. (Emphasis supplied.)

In July 1929, the state legislature simplified the pleading of a criminal charge in enacting what are now known as Secs. 2941.03, 2941.05, 2941.06 (formerly Ohio General Code Sections 13437-2, 13437-4, 13437-5). Under the provisions of Ohio Revised Code Sec. 2941.07, the defendants could seasonably request the prosecuting attorney to furnish a bill of particulars setting up specifically the nature of the offense charged.

The *Cruikshank* case, cited by the petitioners, is clearly distinguishable from the case at bar and, accordingly, the principles enunciated in the former should be read in the light of its facts. (*United States v. Cruikshank*, 92 U. S. 542, 23 L. ed. 588 (1876).) Cruikshank and others had been indicted *under the laws of the United States* upon sixteen counts. The general charge in the first eight counts was that of "banding," and in the second eight, that of "conspiring" together to injure, oppress, threaten and intimidate two citizens of the United States, of African descent and persons of color, with the intent thereby to hinder and prevent them in their free exercise and enjoyment of rights and privileges "*granted and secured to them in common with all other good citizens of the United States by the Constitution and laws of the United States.*" The counts of the indictment were held to be too vague and general:

> A citizen of the United States is also a citizen of a particular state. As a citizen of a particular state,

he possesses rights and privileges *which have neither been granted nor secured to him by the Constitution of the United States.*

The counts did not show that it was the intent of the defendants by their conspiracy to hinder or prevent the enjoyment *of any right granted or secured by the Constitution of the United States.*

There was no specification of any particular right *granted by the Constitution of the United States.*

Mr. Chief Justice Waite eloquently and succinctly stated the issue which was decided: *"According to the view we take of these counts the question is not whether it is enough, in general, to describe a statutory offense in the language of the statute, but whether the offense has here been described at all."*

The *Cruikshank* case, discussed above, comprehends counts of an indictment far different from those in the indictment in this case.

"The State of Ohio:
Cuyahoga County, ss.:

Of the term of September in the year of our Lord one thousand nine hundred and fifty-seven. The jurors of the grand jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present: that Harry Hirschkowitz, Roy Sims and Leo Parker, on or about the 13th day of September, 1957 (20th day of August, 1957), at the county aforesaid, did unlawfully obtain possession of certain money in the amount and value of One Thousand Dollars (Three Hundred Dollars) from Sam W. Levine (James L. Altmeyer), the property of Sam W. Levine (James L. Altmeyer), and did obtain said property from the said Sam W. Levine (James L. Altmeyer), with the consent of the said Sam W. Levine (James L. Altmeyer), which con-

sent the said Harry Hirschkowitz, Roy Sims and Leo Parker induced by false and fraudulent representations and pretenses, with the intent of permanently depriving said Sam W. Levine (James L. Altmeyer) of said One Thousand Dollars (Three Hundred Dollars), contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

Signed: John T. Corrigan, Prosecuting Attorney."

It will be noted that, in the foregoing recitation of the counts of the indictment, such counts are blended together for the purposes of this pleading to avoid unnecessary repetition.

Similar to the above-cited *Cruikshank* case is another matter cited by the petitioners; namely, *United States v. Hess*, 124 U. S. 483, 31 L. ed. 516, 8 S. Ct. 571 (1888). Therein the defendant was indicted for an alleged offense, described in general terms as that of devising "a scheme to defraud divers other persons," to the grand jurors unknown, and intending to effect it by inciting them to open communication with him through the postoffice establishment. The *Hess* case dealt only with generalities. The counts in the indictment in the case at bar charged (1) the unlawful obtaining possession of specific amounts of money, (2) which money was the property of specific persons, (3) with the consent of those specific persons, (4) which consent was induced by false and fraudulent representation and pretenses, and (5) with the intent of permanently depriving those specific persons of those specific amounts.

The petitioners refer to *State v. Knight*, 54 O. S. 365, 43 N. E. 995 (1896) in support of their position—a case wherein there was a defect in *failing to allege that the offense was committed at the county where the indictment*

was found. No situation analogous to the case at bar appears.

The petitioners cite Ohio cases, hoping to sustain their attack upon the indictment in this case. (*Lamberton v. State*, 11 Ohio 284 (1842); *Dillingham v. State*, 5 O. S. 280 (1855); *Redmond v. State*, 35 O. S. 81 (1878), and *DuBrul v. State*, 80 O. S. 52, 87 N. E. 837 (1909).) These cases antedated by many years the above-mentioned simplification by the Ohio legislature in July 1929 of the pleading of criminal charges.

The *Harris* case, cited by the petitioners and decided in 1932, stands for the principle that if *specific* false and fraudulent representations and pretenses are pleaded, there must also appear averments negativing the truth of the alleged false and fraudulent representations and pretenses. In its opinion at page 260, the court quotes from 25 *Corpus Juris* 626, Section 60:

> "The indictment must negative by special averment the truth of *the pretense alleged.*" (Emphasis supplied.) (*Harris v. State*, 125 O. S. 257, 181 N. E. 104) (1932).

In the instant case, no specific false and fraudulent representations and pretenses appeared in the indictment. Hence, there was no necessity for negative averments. The underlying theory is also seen in Ohio Revised Code Sec. 2941.10 (enacted as Ohio General Code Sec. 13437-9 in the year 1929), which dispenses with the indictment's negativing any exception, excuse, or proviso contained in the statute creating or defining the offense charged.

Bill of Particulars.

The petitioners raise the question of the bill of particulars, although they themselves have ruled out that matter at pages seven and eight of their petition:

> "This case is concerned only with the denial of petitioners' constitutional rights by reason of the insufficiency of the *indictment*. * * * Prior to the trial the petitioners had requested the prosecutor to furnish a bill of particulars. A purported bill of particulars was furnished in response to this request, which under the law of Ohio cannot be considered as in any way aiding the sufficiency of the indictment or correcting any deficiency in the indictment."

We have no quarrel with the holdings in *State v. Collett*, 44 Ohio Law Abs. 225, 58 N. E. 2d 417 (1944), and *Campfield v. State*, 91 Ohio Appeals 74, 105 N. E. 2d 661 (1950), relative to the function of a bill of particulars. In fact, the *Collett* case, cited by the petitioners as authority, reveals that the indictment in the case at bar is a valid and sufficient indictment:

> "A bill of particulars is designed to be used *only where the indictment is sufficient on demurrer*."

The *Collett* case quotes approvingly 27 *Am. Jur.* 671, giving further evidence of the sufficiency of the indictment in the instant case:

> "* * * as a general rule where an indictment is substantially good but does not so exactly allege the nature and extent of the crime of which the defendant is accused as will enable him properly to prepare his defense without a bill of particulars, the court will order the prosecuting attorney to furnish such a bill." (Citing *Kirby v. U. S.*, 174 U. S. 47, *Dunlop v. U. S.*, 165 U. S. 486, and other authorities.)

With reference to the right of the petitioners to file a motion to quash an indictment after a bill of particulars

has been furnished, the defense cites *State of Ohio v. Kearns*, 69 Ohio Law Abs. 482, 126 N. E. 2d 607 (1955). *Nowhere in the cited case does it appear that there had been filed a demurrer or plea in bar or the general issue*, any of which would have waived all defects which might be excepted to by a motion to quash. (Ohio Revised Code, Sec. 2941.59.) In the case at bar, as mentioned earlier, the petitioners had pleaded not guilty long before presenting their motion to quash.

Equal Protection of the Law.

Since there was a sufficient indictment in the case at bar, there was no denial to the petitioners of the equal protection of the law guarantee by the provisions of the Fourteenth Amendment to the Constitution of the United States. There was no discrimination in either the form or substance of the formal charge preferred by the grand jury.

There is no parallel between the case at bar and those cited by the petitioners with reference to prison authorities' failure to deliver or suppression of inmates' documents concerning appeals to courts or otherwise dealing with the lawfulness of their imprisonment. (*Cochran v. Kansas*, 316 U. S. 255, 86 L. ed. 1453, 62 S. Ct. 1068; *Dowd v. U. S.*, 340 U. S. 206, 95 L. ed. 215, 71 S. Ct. 262 (1951); *Ortega v. Ragen*, 216 F. 2d 561, 7th Circuit Court of Appeals, 349 U. S. 940, 75 S. Ct. 786 (1954).)

CONCLUSION.

It is apparent that the petitioners had no desire to go to trial on the merits of the case and, accordingly, they utilized last-minute pleadings to forestall a trial by attacking the indictment. It was unnecessary, impracticable, and it would be a disclosure of evidence to include in the indictment the innumerable false and fraudulent representations and pretenses made through speech, silence, action, and inaction.

No substantial Federal Constitutional question is involved in this case, nor is the decision of the courts of the State of Ohio in conflict with any applicable decision of this Court. The claim of the petitioners that they were denied equal protection of the laws and due process of law is without foundation. The Supreme Court of the State of Ohio properly overruled petitioners' motion for leave to appeal.

Respondent respectfully urges that the petition for a writ of certiorari be denied.

Respectfully submitted,

JOHN T. CORRIGAN,
Prosecuting Attorney of
Cuyahoga County, Ohio,

THOMAS L. OSBORNE,
Assistant Prosecuting Attorney
Attorneys for Respondent.

APPENDIX.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

I.

Constitution of the United States, Amendment XIV, Section I.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II.

Constitution of the State of Ohio, Article I, Section 10. Trial for crimes; Witness.

* * * no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; * * *. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; * * *.

III.

Revised Code of Ohio, Section 2907.21. Larceny by trick.

No person shall obtain possession of, or title to, any thing of value with the consent of the person from whom he obtained it, provided he induced such consent by a false or fraudulent representation, pretense, token, or writing.

Whoever violates this section is guilty of larceny by trick, and, if the value of the thing so obtained is sixty dollars or more, shall be imprisoned not less than one nor more than seven years. If the value is less than sixty dollars, such person shall be fined not more than three hundred dollars or imprisoned not more than ninety days, or both.

IV.

Revised Code of Ohio, Section 2941.03. Sufficiency of indictments or informations.

An indictment or information is sufficient if it can be understood therefrom:

(A) That it is entitled in a court having authority to receive it, though the name of the court is not stated;

(B) If it is an indictment, that it was found by a grand jury of the county in which the court was held, of if it is an information, that it was subscribed and presented to the court by the prosecuting attorney of the county in which the court was held;

(C) That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with a statement that his true name is unknown to the jury or prosecuting attorney, but no name shall be stated in addition to one necessary to identify the accused;

(D) That an offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the county, is triable therein;

(E) That the offense was committed at some time prior to the time of finding of the indictment or filing of the information.

V.

Revised Code of Ohio, Section 2941.10. Indictment complete.

No indictment or information for any offense created or defined by statute is objectionable for the reason that it fails to negative any exception, excuse, or proviso contained in the statute creating or defining the offense. The fact that the charge is made is an allegation that no legal excuse for the doing of the act exists in the particular case.

VI.

Revised Code of Ohio, Section 2941.04. Two or more offenses in one indictment.

An indictment or information may charge two or more different offenses connected together in their commission, or different statements of the same offense, or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments or informations are filed in such cases the court may order them to be consolidated.

* * * * *

VII.

Revised Code of Ohio, Section 2941.05. Statement charging an offense.

In an indictment or information charging an offense each count shall contain, and is sufficient if it contains in substance, a statement that the accused has committed some public offense therein specified. Such statement may be made in ordinary and concise language without any technical averments or any allegations not essential to be proved. It may be in the words of the section of the Re-

vised Code describing the offense or declaring the matter charged to be a public offense, or in any words sufficient to give the accused notice of the offense of which he is charged.

VIII.

Revised Code of Ohio, Section 2941.06. Form of indictment or information.

An indictment may be substantially in the following form:

The State of Ohio,
County, ss.:

Of the Term of in the Year of our Lord one thousand nine hundred and

The jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, in the name and by the authority of the State of Ohio, do find and present that A. B., on the day of 19 at the county of aforesaid, did (here insert the name of the offense, if it has one, such as murder, arson, or the like, or if a misdemeanor having no general name, insert a brief description of it as given by law) contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

C. D.

Prosecuting Attorney.

(INDORSED) A true bill.

E. F., Foreman of the Grand Jury.

IX.

Revised Code of Ohio, Section 2941.07. Forms in charging offenses.

The following forms may be used in charging offenses:

* * * * *

Larceny. A. B. stole from C. D.
of the value of one hundred dollars.

* * * * *

Forms authorized by other sections of the Revised Code and other brief and comprehensive forms applicable to other offenses may also be used. The prosecuting attorney, if seasonably requested by the defendant, or upon order of the court, shall furnish a bill of particulars setting up specifically the nature of the offense charged.

X.

Revised Code of Ohio, Section 2941.29. Time for objecting to defect in indictment.

No indictment or information shall be quashed, set aside, or dismissed, or motion to quash be sustained, or any motion for delay of sentence for the purpose of review be granted, nor shall any conviction be set aside or reversed on account of any defect in form or substance of the indictment or information, unless the objection to such indictment or information, specifically stating the defect claimed, is made prior to the commencement of the trial, or at such time thereafter as the court permits.

XI.

Revised Code of Ohio, Section 2945.59. Proof of defendant's motive.

In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.